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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/568,879 | 07/21/2006 | Kent Aaron Nixon | 4507-1011 | 9590 |

466 7590 10/28/2011
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| EXAMINER |
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WOOD, KIMBERLY T

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3632

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| NOTIFICATION DATE | DELIVERY MODE |
|-------------------|---------------|

10/28/2011

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/568,879
Filing Date: July 21, 2006
Appellant(s): NIXON ET AL.

Roland E. Long, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 15, 2011
appealing from the Office action mailed March 14, 2011.

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(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 57-70 are rejected and pending

Claims 71-74 are withdrawn and pending.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

| | | |
|-----------|---------|---------|
| 6,679,465 | Leasure | 1-2004 |
| 5,996,957 | Kurtz | 12-1999 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 57-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leasure 6,679,465 in view of Kurtz 5,996,957. Leasure discloses an object attachment device (34, 36 and 25) comprising a bracket having at least two parts including a fastening recess (34), support means (41), fastening means (38), a holder (42), a holder engagement portion (32) having a receptacle having an entry slot, attachment device engaging portion (39) separable from the holder having a projection having at least two projecting portions on either side of the shaft (threads on bolt) and a shaft (the elongated shaft of bolt 39). Leasure discloses all of the limitations of the claimed invention except for the drink holder being a ring and a frame. Kurtz teaches that it is well known to have a drink holder having a ring (26) and a frame (24 and 18). It would have been obvious to one having ordinary skill in the art to have modified Leasure to have included the ring and frame as taught by Kurtz for the purpose of allowing the device to support various type of objects including bows and cylindrical objects including drinks. The modified version of Leasure in view of Kurtz would

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allow for the object holder of Leasure to be removed by removing the bolt (39 of Leasure) and then replacing it with a similar object holder which includes a ring and frame (as taught by Krutz) but includes the plate member 48 including the ratchet faces (as taught by Leasure). Leasure in view of Kurtz discloses all of the limitations of the claimed invention except for the connector holder being a entry slot. It would have been obvious to one having ordinary skill in the art at the time of the invention to have made the entry opening (32 of Leasure) having a shape of an entry slot since such a modification is merely a reversal of parts since the opening of the holder (42) is an entry slot (see column 2, lines 25ff) to prevent the rotation of the bolt since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

(10) Response to Argument

In response to appellant's argument that Leasure does not disclose a drink container holder, this argument is hereby traversed a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use,

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then it meets the claim. Leasure is clearly capable of performing the intended use of supporting a drink container whereby the drink container can be supported either between the arms (50 and 52) of the holder or supported on top of the arms 50 and 52) therefore being a drink container holder.

In response to appellant's argument that Leasure is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Leasure clearly teaches a holder member including an object attachment device which rotate relative to one another therefore being reasonably pertinent to the particular problem.

In response to appellant's argument that Leasure does not disclose a holder engagement portion and the attachment device engagement portion, when engaged, allow free relative angular movement between the object attachment device and the drink container holder in a selected plane, is hereby traversed. Leasure clearly teaches that a holder engagement portion (32) and the attachment device engagement portion (39), when engaged, allow free relative angular movement between the object

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attachment device (34, 36, 25) and the drink container holder (42) in a selected plane since the object attachment device (34, 36, and 25) is allowed to rotate relative to the drink container holder (42) via the connection between the holder engagement portion (32) and the attachment device engagement portion (39) to allow the holder (42) to move freely to various positions relative to the object attachment device (34, 36, and 25). The applicant continues to argue that Leasure does not allow "free swinging and uncontrolled movement" however the claims do not include such limitations. Applicant only claims that a holder engagement portion and the attachment device engagement portion, when engaged, allow free relative angular movement between the object attachment device and the drink container holder in a selected plane which is not the same as "free swinging and uncontrolled movement" therefore Leasure clearly teaches the limitations of the applicant's claimed invention by allowing "free relative angular movement" between the object attachment device (34, 36, and 25) and the drink container holder (42).

In response to appellant's argument that Leasure does not disclose a holder engagement portion and the attachment device engagement portion, when engaged, allow free relative angular movement between the object attachment device and the drink container holder in a selected plane, is hereby traversed.

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Leasure clearly teaches that a holder engagement portion (32) and the attachment device engagement portion (39), when engaged, allow free relative angular movement between the object attachment device (34, 36, 25) and the drink container holder (42) in a selected plane since the object attachment device (34, 36, and 25) is allowed to rotate relative to the drink container holder (42) via the connection between the holder engagement portion (32) and the attachment device engagement portion (39) as disclosed within Leasure which states in column 2, lines 50ff,

Wing nut 41 can be loosened on bolt 39 permitting second member 42 be rotated and adjustably positioned at an optimal position relative to first member 22.

This provides the evidence that Leasure will undoubtedly perform the function of wherein the holder engagement portion (32) and the attachment device engagement portion (39), when engaged, allow free relative angular movement between the object attachment device (34, 36, 25 which makes up first member 22) and the drink container holder (second member 42) as required to meet applicant's claim 1 limitations. When loosening the wing nut on the attachment device engaging portion (39), the holder engagement portion (32) continues to engage the attachment device engagement portion (39) and allow free relative angular

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movement between the object attachment device (34, 36, 25 which makes up first member 22) and the drink container holder (42) so despite the applicant's mere allegations that Leasure does not meet the applicant's claimed invention Leasure specifically states otherwise within the specification. The examiner does not deny that Leasure does disclose a rigid holder for an object however, Leasure also discloses how the rigid holder is allowed to rotate allowing the user to position the holder (42) in a desired angular support position relative to the object attachment device through "free relative angular movement".

In response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The applicant attempts to argue that "Kurtz has a serrated contact (42) allowing the drink holder to be set to certain specific angles, Thus there would also be no free movement in Krutz" however the examiner relies on Krutz for the sole purpose of teaching that it is known to a drink holder having a ring (26) and a frame (24 and 18) within a drink container holder apparatus that is capable of position rotation Krutz is not relied upon regarding the connection between the

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object attachment device and the holder for "free angular movement" as applicant argues.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Kimberly T. Wood

Conferees:

Brian K. Green /BKG/

Terrell Mckinnon

/T. M./

Supervisory Patent Examiner, Art Unit 3632